

AGO PRELIMINARY REPORT ON UNTESTED RAPE KITS IN MISSOURI

May 24, 2018

INTRODUCTION

Few acts are more courageous than when a survivor of sexual assault undergoes a sexual assault evidence examination. In the wake of what may be the most traumatic moment of their lives, many survivors submit to a highly invasive examination, performed by a stranger, that can take hours to complete. From the perspective of law enforcement, these examinations are invaluable: the evidence contained in a sexual assault kit (or “rape kit”) often enables law enforcement to identify a perpetrator and obtain a conviction. And because many perpetrators of sexual assault have multiple victims, by enabling a successful prosecution, one survivor’s rape kit might prevent the potential victimization of others, or may provide a break in an unsolved case.

For these reasons, every rape kit reflects an extraordinary sacrifice by a survivor and an extraordinary opportunity for law enforcement. Yet in Missouri—as in many other States across the nation—thousands of SAKs have never been submitted for DNA testing. In November 2017, Attorney General Josh Hawley announced that his office would conduct a review of unsubmitted rape kits in Missouri. The AGO sent detailed surveys to law-enforcement agencies, crime labs, hospitals, and other stakeholders in an effort to estimate both the number of untested rape kits and to identify factors that contributed to those kits going untested. The AGO received responses for 266 law-enforcement agencies, 5 crime labs, and 66 healthcare providers. The AGO also met with a wide range of stakeholders from across Missouri to discuss the issue of untested rape kits and the effect that it has on both law enforcement and the survivors of sexual assault. This report contains the AGO’s preliminary factual findings and sets forth several avenues for further action. Attorney General Hawley is committed to working to ensure the testing of every rape kit administered in Missouri, consistent with survivors’ wishes.

PRELIMINARY FINDINGS

Data gathered by the AGO indicate that there are at least 4,889 untested rape kits in Missouri.

- The data obtained by the AGO indicate that there are at least **4,889 rape kits in Missouri** that have not been submitted for DNA testing. Of these untested kits, **3,701 kits** currently are in the possession of law-enforcement, and **1,188 kits** currently are in the possession of healthcare providers.
- Based on the data obtained by the AGO, there are approximately **80 untested kits per 100,000** residents in Missouri. The table below, adapted from a report by the New Mexico State Auditor,¹ compares this figure with those from other States:

¹ Office of the New Mexico State Auditor, *Special Audit of Untested Sexual Assault Evidence Kits in New Mexico*, at 7 (Dec. 2016). Each State reflected in the table used a different methodology to compile its data. For example, some States included only law-enforcement agencies and crime labs, while the AGO’s investigation has also included healthcare providers. Thus, any cross-state comparison will necessarily be approximate.

State	Number of Untested Rape Kits, Per 100,000 Residents
New Mexico	254
Michigan	153
Tennessee	137
Oregon	122
Ohio	120
Wisconsin	104
Utah	90
Washington	84
Missouri	80
Arkansas	74
Texas	69
Colorado	65
Minnesota	63
Illinois	29
Virginia	28
Connecticut	24
Louisiana	24
Pennsylvania	24
California	23

Data gathered by the AGO indicate that a variety of factors have contributed to the volume of currently untested rape kits in Missouri.

- Law-enforcement agencies identified a number of reasons why they might not submit a rape kit for testing. When asked for the most common reasons, responding agencies identified the following:
 - Victim non-cooperation (49%)
 - Victim was found not to be credible, or no apparent crime was committed (46%)
 - Instructions from the prosecuting attorney (39%)
 - Suspect could be identified without DNA testing (28%)
 - Instructions from forensic laboratory (16%)
 - Other (6%)
- Of the untested kits in the possession of healthcare providers, **679 kits** relate to possible sexual assaults that have not been reported to law enforcement.

Data gathered by the AGO indicate that entities across the State employ inconsistent practices involving the retention and testing of rape kits.

- Among both law-enforcement agencies and healthcare providers, policies regarding the retention of untested rape kits vary:

- Policies reported by law-enforcement agencies vary substantially, ranging from indefinite retention to just 30 days. For ease of analysis, the AGO has classified agency responses in comparison to the U.S. Department of Justice's recent policy guidance that kits should be retained for at least the statute of limitations period or 20 years, whichever period is shorter. Of the agencies that provided information, 123 agencies reported a retention policy that the AGO found to be consistent with DOJ guidance, and 67 agencies reported a retention policy that the AGO found to be inconsistent with DOJ guidance.
 - Policies reported by healthcare providers also vary substantially. Of the healthcare providers who provided information on this issue, 17 reported that they retain kits indefinitely, 4 reported that they retain kits for six months or less, and 11 reported that they retain kits for some fixed period of time of one year or longer.
- Not all law-enforcement agencies document why each rape kit is not submitted for testing. Of the agencies that provided information, 172 indicated that they record the reason why a kit is not submitted for testing, but 50 agencies indicated that they do not record that information.
- Not all law-enforcement agencies notify survivors before the destruction of rape kits. Of the agencies that provided information, 69 agencies indicated that they notify survivors before the destruction of a rape kit, but 124 agencies indicated that they do not do so.

Data gathered by the AGO indicate that Missouri crime labs test most incoming rape kits within 3-4 months after the kits are submitted, but that using state crime labs to test all currently untested kits could take years and could interfere with the investigation of new cases.

- Responding crime labs indicated that a total of 869 rape kits were tested in Missouri in 2017.
- Information provided by responding crime labs indicates that, on average, the time between a crime lab's receipt of a rape kit and the provision of test results to law enforcement is 98 days.² The shortest reported average turnaround time for rape-kit testing was 60 days (St. Charles County Crime Lab), and the longest reported average turnaround time for rape-kit testing was 211 days (Kansas City Police Department Crime Lab).
- Given the data submitted by Missouri crime labs, assuming no changes in those labs' available resources and processes, the AGO estimates that testing the nearly 5,000 currently untested kits in Missouri could take more than 5 years—even if the crime labs were to focus exclusively on testing the historical kits, at the expense of testing new kits.

² This number reflects a weighted average that takes into account each lab's reported average processing time and the total number of kits processed by the lab in 2017. The unweighted average is 116 days. One crime lab did not provide information regarding the turnaround time for rape-kit testing but instead indicated that the average turnaround time for *all* forensic testing is 398 days. The AGO has omitted this figure from these averages.

INITIAL ACTION ITEMS

The AGO is currently taking the following initial actions in response to the preliminary results of the statewide rape kit audit. These actions are only first steps, and much more remains to be done.

- **Securing funding to begin testing currently unsubmitted rape kits.** Despite the diligent work of the State's publicly funded crime labs, those labs simply lack the capacity to test both the current inflow of rape kits and the nearly 5,000 currently untested kits. The most feasible option to address existing untested kits is to contract with private forensic labs to test older kits, while the State's law-enforcement labs focus on new cases. To kickstart this process, in April 2018, the AGO applied for a federal grant that would provide nearly \$1.5 million to begin the testing of currently unsubmitted rape kits. The AGO was pleased to receive support for its grant application from a wide range of stakeholders, including the Missouri Coalition Against Domestic and Sexual Violence (MCADSV), the Missouri State Highway Patrol Crime Lab, the Missouri Police Chiefs' Association, along with healthcare providers, victim advocates, and other law enforcement. Grant award decisions are expected later this year.
- **Securing funding for a statewide tracking system for rape kits.** At present, no statewide system exists to track rape kits as they are collected, transmitted to law enforcement, and submitted for testing. The absence of such a system can hinder survivors' ability to stay apprised of the status of their cases, as well as obscuring the total number of unsubmitted kits in the State. The AGO's federal grant application also sought funding for the creation of a statewide rape-kit tracking system.
- **Expanding training for all stakeholders regarding trauma-informed sexual-assault investigations and the collection, retention, tracking, and testing of rape kits.** The AGO has begun working with stakeholders in Missouri to increase the availability of effective training regarding sexual-assault investigations and the collection, retention, tracking, and testing of rape kits. The AGO looks forward to engaging with these groups in these efforts. Expanded training opportunities will increase statewide uniformity and help ensure that all persons involved in the process employ recognized best practices. As part of its grant application submitted in April, the AGO requested additional funding to help facilitate increased training for law enforcement, prosecutors, healthcare providers, and other stakeholders. However, the AGO will continue engaging on this important issue regardless of whether it receives the federal grant.
- **Formulating uniform statewide standards for the collection, retention, and submission of rape kits.** The data gathered by the AGO demonstrate that, among both law enforcement and healthcare providers, practices relating to rape kits vary widely across the State. These disparities stem largely from the fact that, until now, no central authority has provided that standardized guidance. The General Assembly has considered a number of legislative proposals that would create uniformity on one or more points. Once it becomes clear which legislative proposals from this session are enacted, the AGO looks

forward to working closely with stakeholders to provide concrete and uniform guidance to help ensure that survivors of sexual assault across Missouri receive equal treatment.